

STATE OF MICHIGAN  
COURT OF APPEALS

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BEN PHILLIPS and DEBRA PHILLIPS,

Plaintiffs-Appellees,

v

THE ESTATE OF JACOB HEIKKINEN,

Defendant-Appellant.

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UNPUBLISHED

October 13, 2005

No. 258703

Chippewa Circuit Court

LC No. 01-005942-CZ

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

In this quiet-title action involving the Marketable Record Title Act (MRTA), MCL 565.101 *et seq.*, defendant appeals as of right an order of the circuit court granting summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(9). This appeal also involves a prior order of the court denying defendant’s motion for entry of a formal order of dismissal pursuant to MCR 2.502 for lack of progress. This case revolves around a reservation of mineral rights set forth in a 1918 deed of conveyance that was not found in any documents of conveyance after August 1948. We affirm, albeit on grounds different than those cited by the circuit court.

We review lower court decisions on motions for summary disposition *de novo*. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition brought pursuant to MCR 2.116(C)(9) entitles the movant to judgment if the opposing party has failed to state a valid defense to a claim. Such a motion “is tested solely by reference to the parties’ pleadings.” *Nasser v Auto Club Ins Ass’n*, 435 Mich 33, 47; 457 NW2d 637 (1990).

While we agree that the circuit court erred in granting summary disposition in favor of plaintiffs under MCR 2.116(C)(9), we find that summary disposition was proper under MCR 2.116(C)(10).<sup>1</sup> “[I]f a trial court errs in granting summary disposition under the wrong subrule,

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<sup>1</sup> Plaintiffs alleged that defendant failed to file notice of their purported mineral interest within the forty-year statutory window, as prescribed by MCL 565.103. Defendants denied this allegation as untrue. Although subsequent discovery revealed that plaintiffs’ allegation was, in fact, accurate, it is irrelevant for purposes of a (C)(9) motion. Where “a material allegation of the complaint is categorically denied, summary [disposition] under [MCR 2.116(C)(9)] is improper.” *Nasser, supra* at 47, quoting *Pontiac School Dist v Bloomfield Twp*, 417 Mich 579,

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this Court may review the issue under the correct subrule. Also, it is axiomatic that this Court will not reverse a trial court's decision if the correct result is reached for the wrong reason." *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005)(citation omitted).

The MRTA provides that any person with the legal capacity to own land "who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest[.]" MCL 565.101.<sup>2</sup> An unbroken chain of title is considered to exist where public records disclose a conveyance occurring "not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance . . . purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest," MCL 565.102(a), or where the same occurs through a series of conveyances, MCL 565.102(b). Where an individual acquires marketable title, any claim of interest which depends on an act, transaction, event, or omission outside the appropriate term of years for its existence is extinguished, declared null and void, and of no legal effect. MCL 565.103.<sup>3</sup> Such an interest may be preserved, however, by the filing of proper notice identifying the interest within the applicable twenty- or forty-year timeframe. *Id.*

Plaintiffs can establish an unbroken chain of title, devoid of defendant's purported interest, rooted in an August 1948 quitclaim deed. There is nothing in that deed purporting to

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585; 339 NW2d 465 (1983) (alteration by *Nasser* Court).

<sup>2</sup> The MRTA defines "mineral interest" to be "an interest in minerals in any land if the interest in minerals is owned by a person other than the owner of the surface of the land. Mineral interest does not include an interest in oil or gas or an interest in sand, gravel, limestone, clay, or marl." MCL 565.101a. Here, whether the mineral interest at issue satisfies the statutory definition remains a question of fact unresolved by the trial court. There was some indication on the record that the interest is a limestone derivative, which would not fall under the above definition. This question is irrelevant for purposes here, because as will be shown, summary disposition was proper in any case.

<sup>3</sup> MCL 565.103 provides in pertinent part as follows:

Marketable title shall be held by a person and shall be taken by his or her successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to the 20-year period for mineral interests, and the 40-year period for other interests, and all interests, claims, and charges are hereby declared to be null and void and of no effect at law or in equity. However, an interest, claim, or charge may be preserved and kept effective by filing for record within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests, a notice in writing, verified by oath, setting forth the nature of the claim. [Footnote omitted.]

divest the vendee of a fee simple interest in the property, and thus nothing purporting to divest subsequent titleholders of the same. Under the plain terms of the MRTA, plaintiffs have established an unbroken chain of title, MCL 565.102, and thus have acquired marketable title, MCL 565.101. While defendant's purported mineral interest might have been preserved by the filing of a proper statutory notice, MCL 565.103, it is undisputed that no such notice was filed within the requisite timeframe. Indeed, defendant admitted the same in their response to plaintiffs' interrogatories. As a result, defendant's claimed mineral interest is, as a matter of law, extinguished and rendered null and void. MCL 565.103; see also *Fowler v Doan*, 261 Mich App 595, 600; 683 NW2d 682 (2004).

Defendant also claims that the trial court erred in failing to dismiss plaintiffs' claim twenty-eight days after the court issued a notice of dismissal for lack of progress. We disagree. "The removal of a case from the no-progress docket or the dismissal of a cause of action for want of prosecution are addressed to the discretion of the trial court." *Eliason Corp, Inc v Dep't of Labor*, 133 Mich App 200, 203; 348 NW2d 315 (1984); accord *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 137; 624 NW2d 197 (2000). Our review is restricted to determining whether there is any justification in the record for the trial court's ruling. *Eliason, supra* at 203.

We conclude that the trial court did not abuse its discretion. MCR 2.502(A)(1) provides that a "court may order that an action in which no steps or proceedings appear to have been taken within 91 days be dismissed for lack of progress unless the parties show that progress is being made or that the lack of progress is not attributable to the party seeking affirmative relief." MCR 2.502(B) provides as follows:

(1) If a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress. Such a dismissal is without prejudice unless the court specifies otherwise.

(2) If an action is not dismissed under this rule, the court shall enter orders to facilitate the prompt and just disposition of the action.

Within the time frame provided for in its notice of dismissal, plaintiffs filed a motion for summary disposition with the court. It was not unreasonable for the court to conclude that plaintiffs' filing of such a motion constituted sufficient progress as to obviate the need for dismissal under MCR 2.502.

Affirmed.

/s/ Peter D. O'Connell  
/s/ David H. Sawyer  
/s/ William B. Murphy